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TITLE 64

PERSONS AND PERSONAL RIGHTS

- Chapter 1. Persons, minors, adults and those of unsound mind, 64-101 to 64-114.
2. Personal rights—libel and slander—protection of personal relations, 64-201 to 64-210.
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CHAPTER 1

PERSONS, MINORS, ADULTS AND THOSE OF UNSOUND MIND

- Section 64-101. Minors and adults defined.
64-102. Periods of minority—how calculated.
64-103. Unborn children.
64-104. Persons of unsound mind.
64-105. Powers of minors.
64-106. Contracts of minors—disaffirmance.
64-107. When minors may disaffirm.
64-108. Minor or person of unsound mind cannot disaffirm contract for necessities.
64-109. Minor cannot disaffirm certain obligations.
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64-112. Power of persons whose incapacity has been adjudged—presumption of legal capacity from certificate of institution superintendent or physician.
64-113. Minors and persons of unsound mind liable for wrongs, but not for exemplary damages.
64-114. Minors may enforce their rights.

64-101. (5673) Minors and adults defined. Minors are:

1. Males under twenty-one years of age;
2. Females under eighteen years of age.

All other persons are adults.

History: En. Secs. 10-11, Civ. C. 1895; re-en. Secs. 3584, 3586, Rev. C. 1907; re-en. Sec. 5673, R. C. M. 1921. Cal. Civ. C. Sec. 25. Field Civ. C. Sec. 11.

Cross-Reference

Disability of minor veterans removed, sec. 77-1101.

is age, not minority; hence the contention that a female cannot be held under a commitment in the State Vocational School for Girls after she reaches the age of majority fixed by this section at eighteen years cannot be sustained. State ex rel. Foot v. District Court et al., 77 M 290, 295, 250 P 973.

Operation and Effect

The controlling element in juvenile laws

Infants⇒1.

43 C.J.S. Infants § 2.

64-102. (5674) Periods of minority—how calculated. The periods specified in the preceding section must be calculated from the first minute of the day on which persons are born to the same minute of the corresponding day completing the period of minority.

History: En. Sec. 11, Civ. C. 1895; re-en. Sec. 3585, Rev. C. 1907; re-en. Sec. 5674, R. C. M. 1921. Cal. Civ. C. Sec. 26. Time⇒4.
62 C.J. Time § 9.

64-103. (5675) Unborn children. A child conceived, but not yet born, is to be deemed an existing person, so far as may be necessary for its interests in the event of its subsequent birth.

History: En. Sec. 13, Civ. C. 1895; re-en. Sec. 3587, Rev. C. 1907; re-en. Sec. 5675, R. C. M. 1921. Cal. Civ. C. Sec. 29. Field Civ. C. Sec. 12.

Infants↪1.
43 C.J.S. Infants §§ 1, 3.

64-104. (5676) Persons of unsound mind. Persons of unsound mind, within the meaning of this code, are idiots, lunatics, imbeciles, and habitual drunkards.

History: En. Sec. 14, Civ. C. 1895; re-en. Sec. 3588, Rev. C. 1907; re-en. Sec. 5676, R. C. M. 1921. Field Civ. C. Sec. 13.

Drunkards↪1; Insane Persons↪1 et seq.
28 C.J.S. Drunkards § 2; 44 C.J.S. Insane Persons § 2.

64-105. (5678) Powers of minors. A minor cannot give a delegation of power.

History: En. Sec. 16, Civ. C. 1895; re-en. Sec. 3590, Rev. C. 1907; re-en. Sec. 5678, R. C. M. 1921. Cal. Civ. C. Sec. 33. Field Civ. C. Sec. 15.

Agency—Parents Neglect to Give Notice Not Imputable to Child; Child Incapable of Appointing Agent

The neglect of the parents of an injured child to give the sixty-day notice provided for by ch. 122, l. 1937 (11-1305), may not be imputed to the child, and that since under sec. 64-105, a child is incapable of appointing an agent for any purpose, it is questionable whether the statute can be

complied with in that respect by anyone as agent; a child's cause of action for damages for personal injuries is a property right over which, under sec. 61-110, a parent has no control. *Lazieh v. Belanger*, 111 M 48, 52, 105 P 2d 738.

References

Cited or applied as section 3590, Revised Codes, in *Flaherty v. Butte Electric Ry. Co.*, 40 M 454, 460, 107 P 416.

Infants↪5; Powers↪6.

43 C.J.S. Infants § 23; 49 C.J. Powers § 4.

64-106. (5679) Contracts of minors—disaffirmance. A minor may make a conveyance or other contract in the same manner as any other person, subject only to his power of disaffirmance under the provisions of this chapter, and to the provisions of the chapters on marriage.

History: En. Sec. 17, Civ. C. 1895; re-en. Sec. 3591, Rev. C. 1907; re-en. Sec. 5679, R. C. M. 1921. Cal. Civ. C. Sec. 34. Field Civ. C. Sec. 16.

Minor veterans, disability removed, sec. 77-1101.

Cross-References

Contracts by minors, sec. 13-202.

Infants↪46.

43 C.J.S. Infants §§ 49, 54, 56, 71, 76, 80, 83, 86.

27 Am. Jur. 753, Infants, §§ 10 et seq.

64-107. (5680) When minors may disaffirm. In all cases other than those specified by sections 64-108 and 64-109, the contract of a minor may, upon restoring the consideration to the party from whom it was received, be disaffirmed by the minor himself, either before his majority or within a reasonable time afterwards, or in case of his death within that period, by his heirs or personal representatives.

History: En. Sec. 18, Civ. C. 1895; re-en. Sec. 3592, Rev. C. 1907; re-en. Sec. 5680, R. C. M. 1921. Cal. Civ. C. Sec. 35. Field Civ. C. Sec. 17.

Operation and Effect

Where an infant purchaser of an automobile disaffirmed his contract of purchase, and made complete restoration by redelivering it in substantially the same condition as when he bought it, both he and his sureties were discharged from fur-

ther liability. *Stanhope v. Shambow*, 54 M 360, 363, 170 P 753.

Id. An infant may disaffirm the contracts made by him, other than those for necessities and those entered into under express statutory authority or direction, during infancy or within a reasonable time after reaching majority, provided he first makes restoration of the consideration, thus placing the other party in statu quo.

Id. Since no particular form of disaffirmance of a contract by an infant is

prescribed by this section, a notice to the seller amounting to an unequivocal act on the infant's part of his intention to avoid the sale was sufficient.

A party desiring to rely upon the exception to the rule that a minor may disaffirm a contract (this section) provided for by the following section, to the effect that he cannot disaffirm a contract to pay the reasonable value of things necessary for his support, must plead that the things furnished were necessities in his complaint or reply. *Downey et al. v. Northern Pacific Ry. Co.*, 72 M 166, 182 et seq., 232 P 531.

64-108. (5681) Minor or person of unsound mind cannot disaffirm contract for necessities. A minor, or a person of unsound mind, cannot disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for his support or that of his family, entered into by him when not under the care of a parent or guardian able to provide for him or them.

History: En. Sec. 19, Civ. C. 1895; re-en. Sec. 3593, Rev. C. 1907; re-en. Sec. 5681, R. C. M. 1921. Cal. Civ. C. Sec. 36. Field Civ. C. Sec. 18.

Operation and Effect

Quaere: Is the employment of an attorney by a minor to prosecute an action for false imprisonment a "necessary" within the meaning of this section, a contract for which he cannot disaffirm upon obtaining majority? *Downey et al. v. Northern Pacific Ry. Co.*, 72 M 166, 182 et seq., 232 P 531.

Id. A party desiring to rely upon the exception to the rule that a minor may disaffirm a contract (preceding section)

Id. Where from the very nature or character of a consideration received by a minor for the execution of a contract (services performed by attorneys under a contract of employment to institute an action) it cannot be returned by him as required by this section as a condition precedent to disaffirmance, he may disaffirm though unable to make return.

Infants ⇨ 58.

43 C.J.S. Infants § 75.

27 Am. Jur. 771, Infants, §§ 33 et seq.

provided for by this section, to the effect that he cannot disaffirm a contract to pay the reasonable value of things necessary for his support, must plead that the things furnished were necessities in his complaint or reply.

References

Cited or applied as section 3593, Revised Codes, in *Stanhope v. Shambow*, 54 M 360, 362, 170 P 753.

Infants ⇨ 50 et seq.; Insane Persons ⇨ 75.

43 C.J.S. Infants § 78; 44 C.J.S. Insane Persons § 115.

27 Am. Jur. 758, Infants, §§ 16-22.

64-109. (5682) Minor cannot disaffirm certain obligations. A minor cannot disaffirm an obligation, otherwise valid, entered into by him under the express authority or direction of a statute.

History: En. Sec. 20, Civ. C. 1895; re-en. Sec. 3594, Rev. C. 1907; re-en. Sec. 5682, R. C. M. 1921. Cal. Civ. C. Sec. 37. Field Civ. C. Sec. 19.

References

Cited or applied as section 3594, Revised Codes, in *Stanhope v. Shambow*, 54 M 360, 363, 170 P 753; *Downey et al. v. Northern Pacific Ry. Co.*, 72 M 166, 182 et seq., 232 P 531.

64-110. (5683) Contracts of persons without understanding. A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary for his support or the support of his family.

History: En. Sec. 21, Civ. C. 1895; re-en. Sec. 3595, Rev. C. 1907; re-en. Sec. 5683, R. C. M. 1921. Cal. Civ. C. Sec. 38.

Operation and Effect

In an action by an administratrix to set aside a deed on the ground that when her intestate executed it she was without understanding sufficient to make a valid

contract, complaint examined and held sufficient to permit of proof from which the inference could properly be drawn that the grantor in putting her cross to and delivering the deed acted in obedience to the overpowering will of the grantee. *Kiley v. Danahey*, 61 M 608, 612, 202 P 1110.

Id. Plaintiff having based her action

on the ground that at the time the deceased grantor executed the deed sought to be set aside she did not have capacity to make a contract under this section, and not on the ground that she was entitled to rescind under the following section, an allegation that she had restored or offered to restore everything of value deceased had received from defendant was not required.

A contract made with a person entirely without understanding is void *ab initio* (this section), while one made with a person of unsound mind "but not entirely without understanding" (following section) is voidable only at the suit of one

seeking to rescind on one of the grounds mentioned in the Chapter of the Codes relating to rescission. *Fleming v. Consolidated M. S. Co.*, 74 M 245, 252 et seq., 240 P 376.

References

Murphy v. LaChapelle, 95 M 36, 38, 24 P 2d 131; *Stagg v. Stagg*, 96 M 573, 592 et seq., 32 P 2d 856.

Insane Persons—72, 75.

44 C.J.S. Insane Persons §§ 110, 112, 115.

28 Am. Jur. 691, Insane and Other Incompetent Persons, §§ 55-92.

64-111. (5684) Contracts of other persons of unsound mind. A conveyance or other contract of a person of unsound mind, but not entirely without understanding, made before his incapacity has been judicially determined, is subject to rescission, as provided in the chapter on rescission of this code.

History: En. Sec. 22, Civ. C. 1895; re-en. Sec. 3596, Rev. C. 1907; re-en. Sec. 5684, R. C. M. 1921. Cal. Civ. C. Sec. 39. Field Civ. C. Sec. 21.

Cross-Reference

Persons of unsound mind, power to make contracts, sec. 13-202.

Operation and Effect

Plaintiff having based her action on the ground that at the time the deceased grantor executed the deed sought to be set aside she did not have capacity to make a contract under the preceding section, and not on the ground that she was entitled to rescind under this section, an allegation that she had restored or offered to restore everything of value deceased had received from defendant was not required. *Kiley v. Danahey*, 61 M 608, 612, 202 P 1110.

A contract made with a person entirely without understanding is void *ab initio* (preceding section), while one made with a person of unsound mind "but not entirely without understanding" (this sec-

tion) is voidable only at the suit of one seeking to rescind on one of the grounds mentioned in the Chapter of the Codes relating to rescission. *Fleming v. Consolidated M. S. Co.*, 74 M 245, 252 et seq., 240 P 376.

Where defendant in an action on a promissory note pleaded in defense undue influence and lack of consideration, and in addition relied upon this section, providing that a contract of a person of unsound mind is subject to rescission, and the evidence was sufficient to warrant a verdict in his favor as to undue influence and lack of consideration, it was immaterial that he did not proceed to have the note rescinded. *Stagg v. Stagg*, 96 M 573, 592 et seq., 32 P 2d 856.

References

Murphy v. LaChapelle, 95 M 36, 38, 24 P 2d 131.

Contracts—92; Insane Persons—73 et seq.

17 C.J.S. Contracts § 133; 44 C.J.S. Insane Persons §§ 109, 110, 111, 112.

64-112. (5685) Power of persons whose incapacity has been adjudged—presumption of legal capacity from certificate of institution superintendent or physician. After his incapacity has been judicially determined, a person of unsound mind can make no conveyance or other contract, except where such contract confers a beneficial interest to his estate, nor delegate any power, nor waive any right, until his restoration to capacity; but a certificate from the medical superintendent or resident physician or other officer of the insane asylum to which such person may have been committed, whether said insane asylum is in this state or elsewhere, showing that such person has been discharged, released or paroled therefrom, cured and restored to reason, or discharged, released, or paroled in an improved con-

dition shall establish the presumption of legal capacity in such person from the time of such discharge, release or parole.

History: En. Sec. 23, Civ. C. 1895; re-en. Sec. 3597, Rev. C. 1907; re-en. Sec. 5685; R. C. M. 1921; amd. Sec. 1, Ch. 8, L. 1925. Cal. Civ. C. Sec. 40. Based on Field Civ. C. Sec. 22.

substitutes for the presumption of sanity the presumption of insanity until the certificate provided for is obtained. State v. Bucy, 104 M 416, 419, 66 P 2d 1049.

Presumption of Insanity Rebuttable

By virtue of this section an adjudication of insanity under sections 38-201 to 38-208 does not establish a conclusive, but a rebuttable presumption of insanity. It

Insane Persons 4, 5, 60, 72.
44 C.J.S. Insane Persons §§ 3, 98, 100, 103-106, 110, 112, 116.
28 Am. Jur. 695, Insane and Other Incompetent Persons, § 57.

64-113. (5686) Minors and persons of unsound mind liable for wrongs, but not for exemplary damages. A minor, or person of unsound mind, is civilly liable for a wrong done by him, but is not liable in exemplary damages unless at the time of the act he was capable of knowing that it was wrongful.

History: En. Sec. 24, Civ. C. 1895; re-en. Sec. 3598, Rev. C. 1907; re-en. Sec. 5686, R. C. M. 1921. Cal. Civ. C. Sec. 41.

43 C.J.S. Infants §§ 87, 89, 92; 44 C.J.S. Insane Persons §§ 123-125.
27 Am. Jur. 812, Infants, §§ 90-96; 28 Am. Jur. 728, Insane and Other Incompetent Persons, §§ 93-101.

Infants 59, 64; Insane Persons 80, 82 et seq.

64-114. (5687) Minors may enforce their rights. A minor may enforce his rights by civil action, or other legal proceedings, in the same manner as a person of full age, except that a guardian must conduct the same.

History: En. Sec. 25, Civ. C. 1895; re-en. Sec. 3599, Rev. C. 1907; re-en. Sec. 5687, R. C. M. 1921. Cal. Civ. C. Sec. 42. Field Civ. C. Sec. 25.

ern Pac. Ry. Co., 46 M 162, 175, 127 P 146.

Operation and Effect

At common law an infant plaintiff sued by guardian ad litem, but under the statutes of this state he appears by his general guardian or his guardian ad litem. Flaherty v. Butte Electric Ry. Co., 40 M 454, 459, 107 P 416; Melzner v. North-

References

State ex rel. Haynes v. District Court, 106 M 578, 584, 81 P 2d 422; Mitchell v. McDonald, 114 M 292, 298, 136 P 2d 536.

Infants 70, 78.
43 C.J.S. Infants § 108.
27 Am. Jur. 833, Infants, §§ 113 et seq.

CHAPTER 2

PERSONAL RIGHTS—LIBEL AND SLANDER—PROTECTION OF PERSONAL RELATIONS

- Section 64-201. General personal rights.
64-202. Defamation—how effected.
64-203. Libel defined.
64-204. Slander, what constitutes.
64-205. Liability of owner of radio station—libel.
64-206. Submission of copy of address.
64-207. Construction of act—liability for libel.
64-208. What communications are privileged.
64-209. Protection of personal relations.
64-210. Right to use force.

64-201. (5688) General personal rights. Besides the personal rights mentioned or recognized in this code, every person has, subject to the qualifications and restrictions provided by law, the right of protection from

bodily restraint or harm, from personal insult, from defamation, and from injury to his personal relations.

History: En. Sec. 30, Civ. C. 1895; re-en. Sec. 3600, Rev. C. 1907; re-en. Sec. 5688, R. C. M. 1921. Cal. Civ. C. Sec. 43. Field Civ. C. Sec. 27.

References

Cited or applied as section 30, Civil

Code, in *McKenzie v. Doran*, 39 M 593, 596, 104 P 677.

Civil Rights 1 et seq.; Libel and Slander 1 et seq.; Torts 3.

14 C.J.S. Civil Rights § 1; 36 C.J. Libel and Slander §§ 11, 13; 62 C.J. Torts § 17.

64-202. (5689) Defamation—how effected. Defamation is effected by:

1. Libel;
2. Slander.

History: En. Sec. 31, Civ. C. 1895; re-en. Sec. 3601, Rev. C. 1907; re-en. Sec. 5689, R. C. M. 1921. Cal. Civ. C. Sec. 44. Field Civ. C. Sec. 28.

References

Cited or applied as section 31, Civil

Code, in *McKenzie v. Doran*, 39 M 593, 596, 104 P 677.

Libel and Slander 1.

36 C.J. Libel and Slander § 13 et seq.

33 Am. Jur. 29, Libel and Slander.

64-203. (5690) Libel defined. Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation.

History: En. Sec. 32, Civ. C. 1895; re-en. Sec. 3602, Rev. C. 1907; re-en. Sec. 5690, R. C. M. 1921. Cal. Civ. C. Sec. 45. Field Civ. C. Sec. 29.

Complaint

A complaint against a newspaper for libel which does not plead special damages does not state a cause of action unless the article published was libelous per se. *Nolan v. Standard Publishing Co.* et al., 67 M 212, 220, 216 P 571.

A newspaper article relating to acts and conduct of an employee of a rival paper said to have been done and indulged in in an effort to injure the former, examined and held not libelous per se, in the absence of innuendo or explanation, nor sufficient to show that it injured plaintiff in his business or profession, exposed him to hatred, contempt, ridicule or obloquy, or caused him to be shunned or avoided (this section), and demurrer to the complaint should have been sustained. *Woolston v. Montana Free Press et al.*, 90 M 299, 2 P 2d 1020.

Damages

Words defamatory per se carry the presumption of falsity and damage and therefore where a publication is libelous per se the plaintiff may recover general damages without allegation or proof of special damages; on the contrary, where the words are not actionable per se, there can be no recovery of general damages without a pleading of special damages.

Manley v. Harer et al., 73 M 253, 258, 235 P 757.

Id. General damages in the law of libel are those which the law presumes actually, proximately and necessarily result from the publication of the defamatory matter, while special damages are the natural, but not the necessary, result thereof, and do not follow by implication of law upon proof of the defamatory words.

Where in an action against a newspaper for libel no special damages were pleaded, plaintiff, to be entitled to damages, was required to plead and prove that the published language complained of, unaided by any innuendo, was actionable per se; having failed to do so, objection to the introduction of testimony and defendant's motion for a directed verdict in its favor should have been sustained. *Griffin v. Opinion Publishing Co.*, 114 M 502, 520, 138 P 2d 580.

Definitions

"Inducement" in a declaration for libel under common-law pleading is the narration of the extrinsic circumstances which, coupled with the published language, affects its construction and renders it actionable, when, standing alone, the language would appear either not to affect plaintiff or not to affect him injuriously, and "colloquium" is the allegation that the published language was concerning plaintiff, or him, and his affairs, or him and the facts alleged as inducement.

Nolan v. Standard Publishing Co. et al., 67 M 212, 220, 216 P 571.

Alleged libelous words must be construed according to their usual, popular and natural meaning and common acceptance—in the sense in which persons of ordinary intelligence would understand them—the presumption being that those who saw them, so understood them. Porak v. Sweitzer's, Inc., 87 M 331, 339, 287 P 633.

Falsity of Publication

In an action for libel, the plaintiff must be non-suited unless he introduces affirmative evidence of the falsity of the publication. So far as presumptions are concerned, the evidence is at equipoise at the very outset of the case. Cooper v. Romney, 49 M 119, 128, 141 P 289.

Libel of Unlawful Business Not Possible

Where an alleged libel is in respect to an unlawful business carried on by a person, such as that pursued by a professional wrestler, contrary to the penal laws of the state on the subject, he cannot maintain an action for the purpose of recovering damages for injury to his business. Brown v. Independent Publishing Co., 48 M 374, 379, 138 P 258.

Libel Per Quod

To give rise to an action for damages for libel the words published must have been actionable per se, or actionable per quod, and in the absence of an allegation or proof of special damages libel per quod is eliminated from the case; to be actionable per se their injurious character must have been a fact of such common notoriety as to be established by the general consent of men so that courts take judicial notice of it, and where the language is clear and unambiguous it is the duty of the trial court to determine whether it is actionable per se or per quod. Griffin v. Opinion Publishing Co., 114 M 502, 508, 138 P 2d 580.

Libel Per Se

In determining whether a publication is libelous per se, the language complained of must be construed in its relation to the entire article in which it appears, for its ordinary meaning may be limited or changed by the circumstances, or by qualifications expressly annexed to its use. Paxton v. Woodward, 31 M 195, 207, 78 P 215; Cooper v. Romney, 49 M 119, 125, 141 P 289.

The fact that a reporter believed statements which were libelous per se to be fair and true, or that defendant publisher, accepting them as true, published the story as a fair and true one, did not

constitute any excuse or justification in an action for libel. Kelley v. Independent Publishing Co., 45 M 127, 139, 122 P 735.

To state a cause of action for general damages, the language complained of must be libelous per se, and to be libelous per se, the language must be such as, without the aid of innuendo, imputes to the aggrieved party the commission of a crime, or necessarily exposes him to hatred, contempt, ridicule, or obloquy. Brown v. Independent Publishing Co., 48 M 374, 379, 138 P 258; Cooper v. Romney, 49 M 119, 125, 141 P 289; Lemner v. The "Tribune," 50 M 559, 564, 148 P 338.

In determining whether language complained of is libelous per se, it must be considered in its relation to the entire article in which it appears; and to warrant the conclusion that it is of such character, the words must be susceptible of but one meaning, namely, that from its publication pecuniary loss to plaintiff necessarily must, or presumably did, follow as its proximate consequence. Brown v. Independent Publishing Co., 48 M 374, 381, 138 P 258.

A publication charging that county commissioners, in letting a public printing contract did so without advertising for bids and out of favoritism, with the evident desire "to deflect all possible graft" the publisher's way, and containing a suggestion that the named amount of money was to be "cut up" among the commissioners, if false and unprivileged, was libelous per se. Cooper v. Romney, 49 M 119, 126, 141 P 289.

Held that a newspaper article headed "The White-Livered Shyster" which in its body imputed grossly criminal conduct to an attorney, and charging him with "creating sham issues," "preaching violation of the law and defiance of the Constitution he has sworn to defend," "inciting anarchy," etc., was libelous per se. Nolan v. Standard Publishing Co., et al., 67 M 212, 220, 216 P 571.

Language which is not libelous per se cannot be made so by innuendo. Manley v. Harer et al., 73 M 253, 258, 235 P 757.

Id. Words which upon their face and without the aid of intrinsic proof are injurious to the person concerning whom they are uttered are defamatory per se; but if the words are of doubtful significance or derive their libelous character from extraneous facts they are not so and the pleader must allege the meaning intended or set forth such facts by proper averment.

Id. To be characterized as libelous per se, the words used must be susceptible of but one meaning. See also Burr v. Winnett Times Publishing Co. et al., 80 M 70, 258 P 242.

Id. Words which in themselves injuriously affect one in his profession, business or employment or which impute dishonesty or corruption to an individual or which charge him with unfaithfulness to his employer are actionable per se.

Held, that a newspaper article published concerning a member of a board of county commissioners seeking re-election, referring to "the interesting way he has of prying open the lid of the county strong box" and likening him to "Kaiser Bill," so far as the former statement is concerned, if libelous, was libelous per quod, requiring an innuendo to explain it, and not per se, and that the latter was simply sarcasm and not libelous. *Burr v. Winnett Times Publishing Co. et al.*, 80 M 70, 258 P 242.

Id. A newspaper article falsely charging a member of a board of county commissioners, in conjunction with the other members, of conducting county business behind closed doors, with keeping county records for public inspection, and with secretly passing a bond issue in a large amount at the highest legal rate of interest, in violation of statutory provisions, whether thus charging a misdemeanor or not, is libelous per se, such charges being sufficient to deprive an official of the benefits of public confidence.

Unless a publication is libelous per se, the complaint, must, to state a cause of action for libel, allege special damages. *Porak v. Sweitzer's, Inc.*, 87 M 331, 339, 287 P 633.

Id. A writing that a person, not a merchant or engaged in a vocation wherein credit is required, owes a debt and refuses to pay is not libelous per se, and therefore does not render the publisher liable without proof of special damages.

Id. Under the last above rule, held that the complaint in an action for libel by one employed in a clerical capacity against a member of a merchants' association which periodically published reports of delinquent debtors and mailed them to its members in the city of plaintiff's residence and elsewhere, merely alleging that plaintiff's name was therein published as owing defendant a stated amount, that the publication was malicious and made for the purpose of injuring her reputation, etc., but not setting up special damages, did not state a cause of action, the publication not having been libelous per se, and that judgment of nonsuit was proper.

The words used in an alleged libelous newspaper article must be susceptible of but one meaning to constitute libel per se; the libelous matter may not be segregated from other parts and construed alone, but the entire statement must be

viewed by the court as a stranger might look at it, without the aid of special knowledge possessed by the parties concerned. *Woolston v. Montana Free Press et al.*, 90 M 299, 2 P 2d 1020.

Id. While it is the law that to assert a suspicion, belief or opinion, is as effectively a libel as though the charge were positively made, a statement in a printed article that an effort had been made to secure the mailing list of a newspaper "in an unethical and underhand manner," and that the surrounding circumstances seemed to warrant the conclusion that the "advertising man" (meaning plaintiff) of another paper was behind the effort, held not libelous per se, in the absence of further statements, as to the conduct of the person or persons who made the attempt, or the extent of the responsibility of plaintiff for the effort in the way it was made.

Under the last clause of this section which declares libel to be a false and unprivileged publication which has a tendency to injure a person in his occupation, held that it is immaterial whether the publication contains opprobrious statements or not; if language damages person about whose affairs published, it is libelous per se. (Holding in *Lemer v. The "Tribune,"* 50 M 559, 148 P 338, to the contrary overruled.) *Miller Insurance Agency v. Home Fire & Marine Ins. Co. of Calif.*, 100 M 551, 564, 51 P 2d 628.

Under the law of libel, words are defamatory per se which upon their face and without the aid of extrinsic proof are injurious to the person concerning whom they are published, and in such a case general damages are recoverable. *Magelo v. Roundup Coal Mining Co.*, 109 M 293, 302, 96 P 2d 932.

Malice

Under the code definition of libel, no mention is made of malice, and the presence or absence of malice becomes material only as a circumstance affording a basis for increasing or diminishing the amount of recovery, and in cases involving the question of privileged communication. *Paxton v. Woodward*, 31 M 195, 211, 78 P 215; *Cooper v. Romney*, 49 M 119, 127, 141 P 289. See also, *Manley v. Harer et al.*, 82 M 30, 35, 264 P 937.

Statements Neither False Nor Defamatory

The following statements, under the facts and circumstances presented, held neither false nor defamatory: that the published article will be a "scoop"; Gather round you boy scouts and girl scouts and learn a few wrinkles in civil affairs"; that plaintiff's offer to compromise his claim

against the city was "a hot one tossed on the table" and that the claim was of "dubious legality"; "few men can serve and sue the city at the same time. Just how the city can legally pay a claim for which it is not obligated is quite difficult of solution. Even with the aid of the higher branches of the law", held not defamatory. *Griffin v. Opinion Publishing Co.*, 114 M 502, 515, 138 P 2d 580.

The Truth

The truth of an alleged defamatory statement of fact is a complete defense to an action for libel. To constitute publication of a newspaper article libelous under this section, it must be false, unprivileged and defamatory; hence where the evidence establishes it to have been true, privileged and not defamatory, there was no libel. *Griffin v. Opinion Publishing Co.*, 114 M 502, 507, 138 P 2d 580.

Libel and Slander 6-18.

36 C.J. Libel and Slander §§ 33-69 et seq., 88, 101 et seq., 117.

Statement or testimony in lunacy proceedings as privileged within law of libel and slander. 2 ALR 1582.

Libel: listing nontraders as unworthy of credit. 3 ALR 1590.

Libel and slander: privilege of communications in relation to member, or prospective member, of society, other than church. 3 ALR 1654.

Libel and slander: communications between officers of corporation. 5 ALR 455.

Liability of town or municipality for libel or slander. 9 ALR 351.

Orally charging a woman with being a whore or prostitute as actionable per se. 11 ALR 669.

Libel and slander: communications by employer to surety company regarding employee. 11 ALR 1014.

Libel and slander: charging one with being a "slacker." 11 ALR 1017.

Retraction as affecting right of action or amount of damages for libel or slander. 13 ALR 794.

Charging merchant with using false weights or measures as libel or slander. 13 ALR 1019.

Libel and slander: privilege of statement or communication by official charged with prosecution or detection of crime. 15 ALR 249.

Liability of one responsible for original libel or slander for its repetition by a third person. 16 ALR 726.

Libel and slander: communication or exhibition to employee or business associate of defendant as publication or privilege. 18 ALR 776.

Possibility of actual malice which will defeat conditional privilege in libel or

slander co-existing with belief in truth of imputation. 18 ALR 1160.

Personal liability of servant or agent to third person for libel published by him while acting in the capacity of servant or agent. 20 ALR 116.

Libel or slander as affected by mistake in statement or publication as to name or description of person to whom it relates. 26 ALR 454.

Relative provinces of court and jury as to privileged occasion and privileged communication in law of libel and slander. 26 ALR 830.

Right of municipal corporation to maintain action for libel or slander. 28 ALR 1377.

Abusive words as slander or libel. 37 ALR 883.

Libel or slander affecting bank. 37 ALR 1348.

Libel by headlines. 40 ALR 583.

Common report as defense to action for libel or slander. 43 ALR 887.

Libel by recall petition. 43 ALR 1268.

Libel and slander: imputing disease as actionable per se. 45 ALR 1114.

Libel and slander: liability of member of a credit association for reporting one as a delinquent debtor. 48 ALR 573.

Libel and slander: imputing disposition to avoid service in war. 49 ALR 260.

Libel and slander: statements respecting race, color, or nationality as actionable. 50 ALR 1413.

Libel and slander: imputation of objectionable political or sociological principles or practices. 51 ALR 1071.

Action by corporation for libel or slander. 52 ALR 1199.

Libel and slander: what imputations against clergymen are actionable. 53 ALR 637.

Moral imputation of sexual immorality to man as actionable per se. 55 ALR 175.

Libel and slander: defamation of one in his character as a political leader or "boss." 55 ALR 854.

Libel or slander by imputation of drunkenness. 58 ALR 1157.

Libel or slander of stockholder or officer by publication or statement which reflects on him as well as on corporation. 58 ALR 1233.

Libel and slander: privilege as to communications respecting church matters. 63 ALR 649.

Liability of telegraph or telephone company for transmitting or permitting transmission of libelous or slanderous messages. 63 ALR 1118.

Libel and slander: imputation of mental disorder, impairment of mental faculties, or want of mental capacity, as actionable per se. 66 ALR 1257.

Statement with reference to discharge from private employment as actionable per se. 66 ALR 1499.

Libel and slander: privilege as to communications to one spouse reflecting on other spouse. 69 ALR 1023.

Law of libel and slander in its application to reflections on ability or skill of public performers, or persons associated with public performances as managers, trainers, etc. 72 ALR 921.

Communication between relatives or members of a family as publication or subject of privilege within law of libel and slander. 78 ALR 1182.

Libel and slander: accidental communication, not intended by defendant, as a publication. 81 ALR 110.

Libel and slander: radio communication and broadcasting. 82 ALR 1109.

Libelous or privileged character of publication by newspaper based on matters received from news agency or regular correspondent. 86 ALR 475.

Libel by will. 87 ALR 234.

Libel and slander: privilege in respect of publications relating to proceedings to disbar or otherwise discipline attorney. 87 ALR 696.

Liability of telegraph company for punitive damages for wrongful or negligent acts of employees as regards messages. 89 ALR 356.

Mental or physical suffering as element of damages for libel or slander. 90 ALR 1175.

Sufficiency of identification of plaintiff by publication or statement complained of, as libelous or slanderous. 91 ALR 1161.

Libel and slander: qualified privilege as regards publication of matters in relation to members of private or quasi public bodies in newspapers or journals of general circulation or in those intended primarily for circulation among their members. 92 ALR 1029.

Libel and slander: words or publication imputing marital discord as actionable per se. 92 ALR 1128.

Defamatory words spoken with regard to a customer's conduct as constituting actionable slander. 92 ALR 1174.

Right of individual member of class or group referred to in a defamatory publication to maintain action for libel or slander. 97 ALR 281.

Libel and slander: privilege of communications made to employee regarding conduct of another employee or former employee. 98 ALR 1301.

Law of libel or slander as applied to motion pictures. 99 ALR 878.

Libel and slander: qualified privilege of reply to defamatory publication. 103 ALR 476.

Libel and slander: privilege as to reports of judicial proceedings as attaching to publication of meetings, etc., before hearings. 104 ALR 1124.

Doctrine of privilege or fair comment as applicable to misstatements of fact in publication (or oral communication) relating to public officer or candidate for office. 110 ALR 412.

Imputing to lawyer solicitation of business or fomenting of litigation as libelous. 112 ALR 177.

Admissibility of testimony of person who spoke or wrote the words upon which an action for slander or libel is predicated as to his intention or the sense in which the words were spoken or written. 113 ALR 670.

Libel and slander: imputation of price cutting. 118 ALR 317.

Libel and slander: garbled, inaccurate, or mistaken report of judicial proceedings as within privilege. 120 ALR 1236.

Libel and slander: imputation of association with persons of race or nationality as to which there is social prejudice. 121 ALR 1151.

Statement or publication respecting physician, surgeon, or dentist, as ground of action for slander or libel. 124 ALR 553.

Libel and slander: defamation of diseased person as ground of action by members of his family, or other persons associated with him, in their own right, because of its tendency to subject them to ridicule or contempt. 132 ALR 891.

Libel and slander: scope of absolute privilege of executive officer. 132 ALR 1340.

Libel and slander: privilege of communications made by private person or concern to public authorities regarding one not in public employment. 136 ALR 543.

Libel and slander: privilege as to allegations in judicial proceedings contrary to facts as previously adjudicated. 136 ALR 1414.

Libel and slander: imputation of poverty. 137 ALR 913.

Libel and slander: publication of notice of cessation of relationship of principal and agent or employer and employee, or of business or professional relationships. 138 ALR 671.

Libel and slander: privilege regarding communications to police or other officer respecting commission of crime. 140 ALR 1466.

Libel and slander: privilege as regards publication of judicial opinion. 146 ALR 913.

Venue of action for libel in newspaper. 148 ALR 477.

Libel and slander: privilege in respect of communication to employer regarding indebtedness of employee. 151 ALR 1104.

Libel and slander: lack of jurisdiction as destroying privilege of defamatory allegations or statements in judicial proceedings. 158 ALR 592.

Libel and slander: statements in the na-

ture of comment upon judicial, legislative, or administrative proceeding, or the decision therein, as within privilege accorded to proceeding or report thereof. 155 ALR 1346.

64-204. (5691) Slander, what constitutes. Slander is a false and unprivileged publication other than libel, which:

1. Charges any person with crime, or with having been indicted, convicted, or punished for crime;
2. Imputes in him the present existence of an infectious, contagious, or loathsome disease;
3. Tends directly to injure him in respect to his office, profession, trade, or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade, or business that has a natural tendency to lessen its profit;
4. Imputes to him impotence or want of chastity; or,
5. Which, by natural consequence, causes actual damage.

History: En. Sec. 33, Civ. C. 1895; re-en. Sec. 3603, Rev. C. 1907; re-en. Sec. 5691, R. C. M. 1921. Cal. Civ. C. Sec. 46. Field Civ. C. Sec. 30.

Cross-Reference

Actions for slander, secs. 93-3812, 93-3813.

Complaint—Sufficiency

Where words in a complaint in an action for slander do not of themselves import a want of chastity, and no allegation is contained therein disclosing that they were used in a defamatory sense, a plea of justification in the answer, which denies the use of the words, will not remedy the defect. *Daniel v. Moncure*, 58 M 193, 190 P 983.

Complaint in an action for slander charging that defendant in the presence of other women said, of and concerning plaintiff, a married woman: "You are a wide whore" held sufficient, such words being actionable per se, and that it was not rendered insufficient by failure to allege that plaintiff was present, no other reasonable inference being possible than that she was present. *Kosonen v. Waara*, 87 M 24, 32, 33, 285 P 668.

In the absence of an allegation of special damages the complaint in an action for slander is properly demurrable, unless the publication is slanderous per se. *Tucker v. Wallace*, 90 M 359, 364, 3 P 2d 404.

Id. In an action for slander by the lessee of farm lands against the lessor, the complaint charging that the lessor's agent, through whom the lease negotiations had been carried on, had stated to one B. that he doubted that plaintiff could go through with the lease and that,

if he was going to fall down, it would be better for plaintiff to give it up in the spring, rather than wait until fall, thus causing less loss for both, held insufficient to allege slander per se for failure to aver that B. was in a position to injure plaintiff's business, or set forth the place where the statement was made.

In suit for slander, complaint which did not allege words slanderous per se or any special damage, held subject to general demurrer. *Keller v. Safeway Stores, Inc.*, 15 F Supp. 716, 724.

Injury to Business

In a case of slander alleged to have injured plaintiff in his business, it is important to show where the statement was made and that the person to whom it was made was in a position to injure his business. *Tucker v. Wallace*, 90 M 359, 364, 3 P 2d 404.

Publication

While, before recovery of damages in a slander action is permissible, it must appear that at least one person of those who heard the defamatory statement knew that plaintiff was meant, since otherwise there would be no publication and therefore no slander, plaintiff is not required to so allege in the complaint but may prove such fact under the general allegation authorized by section 93-3812, that the enactment was made of and concerning plaintiff. *Kosonen v. Waara*, 87 M 24, 32, 33, 285 P 668.

As distinguished from libel, which may be published to all the world, the spoken word in slander reaches only those to whom it is directed; hence, liability for slander attaches only to the initial pub-

lication and the offender is not liable for its repetition, unless he requests or intends that it be repeated. *Tucker v. Wallace*, 90 M 359, 364, 3 P 2d 404.

Slander Per Se

To constitute slander per se, the objectionable statement of or concerning plaintiff must be susceptible of but one meaning; hence, a publication which requires innuendo to demonstrate wherein it is slanderous, cannot be slanderous per se. *Tucker v. Wallace*, 90 M 359, 364, 3 P 2d 404.

To constitute slander (or liable) per se, the published statement of, or concerning the plaintiff must be susceptible of but one meaning; hence a publication which requires innuendo cannot be slanderous per se. *Liebel v. Montgomery Ward & Co.*, 103 M 370, 381, 62 P 2d 667.

Id. In action by legal stenographer against mercantile establishment because its employee said in hearing of others, "Your credit is no good; you don't pay your bills; you owe too many bills in town", held not slanderous per se within the meaning of this section, such words in no manner having reflected upon her skill or ability as a stenographer because credit not vital in her occupation such as in the business of a merchant or trader.

Special Damages

Where in a slander action it was not shown that defendants intended that the words spoken should be repeated and the persons present were plaintiff's sister-in-law and an intimate friend, presumably disinclined to do anything to injure plaintiff, attempted proof of special damages because her employer discharged her on account of the slander, and that she was prevented on account thereof from securing employment, held, insufficient. *Liebel v. Montgomery Ward & Co.*, 103 M 370, 386, 62 P 2d 667.

Subd. 1. Words Charging Commission of Crime

To constitute the false charging of a person with crime slander per se, it is

not necessary that the charge be made with the technical accuracy of an information or indictment, but it may impliedly be so plain that it can have only one meaning to the bystander, to-wit, that the person of whom they were spoken was charged with the commission of a crime. *Keller v. Safeway Stores, Inc.*, 111 M 28, 31, 108 P 2d 605.

Id. In an action for damages against a store and its employee for slander alleging that the employee in the presence of plaintiff's mother spoke the following words, "She (speaking of plaintiff) cashed a check at the Safeway Store and ordered a sack of flour sent to an address where there was no house and received change for the check. The check was no good and if you (referring to the mother) don't have her come down and see me, we will have the sheriff after her." Held, charging plaintiff with obtaining money under false pretenses or on a worthless check, and hence slander per se.

Words charging crime are "slanderous per se" even though they do not charge crime which would justify indictment or punishment for crime of felony grade (94-112); words charging that plaintiff cashed check which was no good, received change, and had flour sent to address where there was no house, threatening to have sheriff sent after plaintiff and identifying plaintiff as one who passed check, held not slanderous per se, since they did not charge crime and were not susceptible of only opprobrious meaning; words are not slanderous per se where their injurious character appears only in consequence of extrinsic circumstances and not from words themselves in their usual signification. *Keller v. Safeway Stores, Inc.*, 15 F Supp. 716.

References

Cited or applied as section 3603. Revised Codes, in *Fowlie v. Cruse*, 52 M 222, 232, 157 P 958.

For pertinent Am. Jur. and ALR references, see § 64-203 ante.

64-205. Liability of owner of radio station—libel. No person, firm, or corporation owning or operating a radio broadcasting station shall be liable under the law of libel and defamation on account of having made its broadcasting facilities available to any person, whether a candidate for public office or any other person, for discussion of controversial or any other subjects, in the absence of proof of actual malice on the part of such owner or operator.

History: En. Sec. 1, Ch. 122, L. 1939.

Libel and Slander—34.
36 C.J. Libel and Slander § 203.

64-206. Submission of copy of address. Any person, firm or corporation owning or operating a radio broadcasting station shall have the right,

but shall not be compelled, to require the submission and permanent filing, in such station, of a copy of the complete address, or other form of expression, if in words, intended to be broadcast over such station, not more than 48 hours before the time of the intended broadcast thereof.

History: En. Sec. 2, Ch. 122, L. 1939.

62 C.J. Telegraphs and Telephones § 379 et seq.

Telegraph and Telephone 25½, 29.

64-207. Construction of act—liability for libel. Nothing in this act contained shall be construed to relieve any person broadcasting over a radio station from liability under the law of libel and defamation. Nor shall anything in this act be construed to relieve any person, firm or corporation owning or operating a radio broadcasting station from liability under the law of libel and defamation on account of any broadcast prepared or made by any such person, firm or corporation or by any officer or employee thereof in the course of his employment; and in any case where liability shall exist on account of any broadcast as declared in the first clause of this sentence, in that event where two or more broadcasting stations were connected together simultaneously or by transcription, film, metal tape or other approved or adapted use for joint operation, in the making of such broadcast, such liability shall be confined and limited solely to the person, firm or corporation owning or operating the radio station which originated such broadcast.

History: En. Sec. 3, Ch. 122, L. 1939.

64-208. (5692) What communications are privileged. A privileged publication is one made:

1. In the proper discharge of an official duty;
2. In any legislative or judicial proceeding, or in any other official proceeding authorized by law;
3. In a communication, without malice, to a person interested therein, by one who is also interested, or by one who stands in such relation to the person interested as to afford a reasonable ground for supposing the motive for the communication innocent, or who is requested by the person interested to give the information;
4. By a fair and true report, without malice, of a judicial, legislative, or other public official proceeding, or of anything said in the course thereof.

History: En. Sec. 34, Civ. C. 1895; re-en. Sec. 3604, Rev. C. 1907; re-en. Sec. 5692, R. C. M. 1921. Cal. Civ. C. Sec. 47. Based on Field Civ. C. Sec. 31.

Communications Not Privileged

The publication of a story of inhuman treatment of children by their mother, gathered by a reporter from gossip heard by him in the sheriff's office, prior to the institution of any proceeding in court, was not privileged. *Kelly v. Independent Publishing Co.*, 45 M 127, 136, 122 P 735.

By making the slanderous statement in the presence of a stranger, defendant removed the bar of privilege otherwise attending communications made by him to his agents only, which might have protected him, in the absence of actual mal-

ice. *Fowlie v. Cruse*, 52 M 222, 236, 157 P 958.

A communication addressed by taxpayers to the board of county commissioners asking for the removal of a road supervisor and containing a libelous statement was not privileged under this section, subdivision 3, where made with malice. *Manley v. Harer et al.*, 73 M 253, 263, 235 P 757.

Held, in an action for libel, that a letter sent by the manager of a coal mining company to the industrial accident board, relative to one of its employees, allegedly with the purpose of prejudicing such employee with reference to a claim then pending before the board, with the intent of impliedly charging him with malingering and pretending to have been

injured when in fact he was not, and with having made other fraudulent claims against the employer, not relevant or material to the issue then before the board, was not privileged under this section, and if false and malicious, is actionable. *Magelo v. Roundup Coal Mining Co.*, 109 M 293, 300, 96 P 2d 932.

Communication Privileged

Under the law of libel, the publication of a petition signed by taxpayers containing charges against a public officer or employee of a violation of his obligations to the financial detriment of the county, and asking for his removal, is privileged unless made with malice, even though the statements contained therein are false. *Manley v. Harer et al.*, 82 M 30, 35, 264 P 937.

Under this section, a publication of a public official proceeding or of anything said in the course thereof is privileged, if it is a fair and true report made without malice. *Griffin v. Opinion Publishing Co.*, 114 M 502, 511, 138 P 2d 580.

Effect of Malice

In order to found liability for libel upon a communication prima facie privileged, actual and not implied malice must be shown. Such was the rule at common law, and such must necessarily be the rule under the statute. *Cooper v. Romney*, 49 M 119, 127, 141 P 289.

Id. A complaint alleging that a libelous publication was false and malicious alleges in substance that it was false and unprivileged, since, in case of malice, the privilege conferred by subdivisions 3 and 4 of this section does not exist.

Striking Opinion of Justice from Records

On motion of counsel for appellant filed

in their own behalf and that of their client to strike from the files of the court a special opinion of a justice concurring in the affirmance of the judgment appealed from, on the ground that statements therein were scandalous, scurrilous and defamatory, ordered that such opinion be expunged from the court records and not published in the reports of its decisions. *Nadeau v. Texas Company*, 104 M 558, 575, 69 P 2d 586, 593.

When a Court or Jury Question

The question whether an alleged libelous publication was privileged, either absolutely or conditionally by reason of its character or the occasion upon which it was made, is a question of law for the trial court's decision whenever the evidence is undisputed, it being only when the evidence is conflicting that the question is to be submitted to the jury. *Griffin v. Opinion Publishing Co.*, 114 M 502, 511, 138 P 2d 580.

When Both Falsity and Malice Must Be Shown

Where the communication appears to have been privileged, the plaintiff must show, not only actual malice, but falsity in the publication. *Cooper v. Romney*, 49 M 119, 128, 141 P 289.

References

Tucker v. Wallace, 90 M 359, 364, 3 P 2d 404.

Libel and Slander—34-51.

36 C.J. Libel and Slander §§ 167, 204, 218 et seq., 223 et seq., 256, 263 et seq., 266.

33 Am. Jur. 123, Libel and Slander, §§ 124-190.

For pertinent ALR annotations, see 64-203, ante.

64-209. (5693) Protection of personal relations. The rights of personal relations forbid:

1. The abduction of a husband from his wife, or of a parent from his child;
2. The abduction or enticement of a wife from her husband, of a child from a parent or from a guardian entitled to its custody, or of a servant from his master;
3. The seduction of a wife, daughter, orphan sister, or servant;
4. Any injury to a servant which affects his ability to serve his master.

History: En. Sec. 35, Civ. C. 1895; re-en. Sec. 3605, Rev. C. 1907; re-en. Sec. 5693, R. C. M. 1921. Cal. Civ. C. Sec. 49. Field Civ. C. Sec. 32.

Abduction—19 et seq.; Husband and Wife—323-325 et seq.; Master and Servant—336-339 et seq.; Parent and Child—18 et seq.; Seduction—1-8.

1 C.J.S. Abduction § 37; 42 C.J.S. Husband and Wife §§ 660-668, 670-672, 678, 679, 681, 682; 39 C.J. Master and Servant § 1604; 46 C.J. Parent and Child § 233 et seq.; 57 C.J. Seduction §§ 1 et seq., 5 et seq.

30 Am. Jur. 85, Interference, §§ 37 et seq.; 39 Am. Jur. 713, Parent and Child, §§ 71 et seq. See generally, 42 Am. Jur.

259, Prostitution; 47 Am. Jur. 627, Seduction.

Promise of marriage as condition of civil action for seduction. 21 ALR 303.

Subsequent intermarriage of parties, forgiveness, compromise, etc., as defense to prosecution for seduction. 80 ALR 833.

Liability for procuring breach of contract. 84 ALR 43.

Right of seduced female to maintain action for seduction. 121 ALR 1487.

Constitutionality, construction, and application of statutes denouncing offense of interfering with or molesting mechanic or laborer. 123 ALR 316.

64-210. (5694) Right to use force. Any necessary force may be used to protect from wrongful injury the person or property of one's self, or of a wife, husband, child, parent, or other relative, or member of one's family, or of a ward, servant, master, or guest.

History: En. Sec. 36, Civ. C. 1895; re-en. Sec. 3606, Rev. C. 1907; re-en. Sec. 5694, R. C. M. 1921. Cal. Civ. C. Sec. 50. Based on Field Civ. C. Sec. 33.

Burden on Plaintiff to Prove Excess, Not on Defendant to Justify the Means

Where plaintiff and her husband were trespassers upon the property of the defendant and at least contributed to provoke an alleged assault for which damages were sought, the burden was upon them to prove that the force used by defendant in repelling it was excessive, and therefore an instruction that the burden rested upon defendant to justify the means employed in trying to evict the plaintiff, was erroneous. *Vaughn v. Mesch*, 107 M 498, 510, 87 P 2d 177.

Excessive Force — Provocation—Exemplary Damages

While it is a sound rule that exemplary damages are not recoverable in an assault case where provocation furnished by the plaintiff affords a reasonable excuse for the assault, the rule that if defendant uses excessive or unwarranted force in repelling the aggressor, such damages may be awarded is equally well settled. *Vaughn v. Mesch*, 107 M 498, 507, 87 P 2d 177.

Malice—Test for Awarding Exemplary Damages

In an assault case where malice is

alleged it is not the quantum of force used but whether the assailant was in a malicious state of mind which is the test in awarding exemplary damages; the use of a dangerous weapon (a hammer) is some evidence of a wanton disregard of human life and generally gives rise to such damages; the question of malice is generally one for the jury. *Vaughn v. Mesch*, 107 M 498, 508, 87 P 2d 177.

Right to Kill Game in Defense of Person or Property

On appeal from a conviction of killing an elk out of season, the defense was predicated upon Art. III, secs. 3, 13 and 29 of the constitution; held, under the facts presented, that legal justification may always be interposed as a defense by a person charged with killing a wild animal contrary to law, and that the general law on the right to use force, this section, must be construed in *pari materia* with sec. 26-307 when the latter is found inoperative, otherwise the latter section would be unconstitutional as denying an inalienable right. Cause was reversed and remanded for a new trial. *State v. Rathbone*, 110 M 225, 237, 100 P 2d 86.

Assault and Battery—13-15, 67-69 et seq.; Homicide—109-124.

6 C.J.S. Assault and Battery §§ 20-22, 72, 78, 79; 40 C.J.S. Homicide § 114 et seq.